Table of Contents

SH 2369362

Deputy Ricardo Munoz – Homicide Bureau Interview Transcript

Deputy Grant Roth – Homicide Bureau Interview Transcripts

Deputy Daniel Leon – Homicide Bureau Interview Transcripts

Deputy Russell Boucher – Homicide Bureau Interview Transcripts

Deputy Christopher Smelser – Homicide Bureau Interview Transcripts

Detective [redacted] – Homicide Bureau Interview Transcripts

Sergeant John Meehan – Homicide Bureau Interview Transcripts

Detective Richard Kiguelman – Homicide Bureau Interview Transcripts

Detective Ismael Jimenez – Homicide Bureau Interview Transcripts

Detective Fred Jimenez – Homicide Bureau Interview Transcripts

NON-DEPARTMENT WITNESS INTERVIEWS

[redacted] – Homicide Bureau Interview Transcripts

[redacted] – Homicide Bureau Interview Transcripts

[redacted] – Homicide Bureau Interview Transcripts

[redacted] – Homicide Bureau Interview Transcripts

[redacted] – Homicide Bureau Interview Transcripts

[redacted] – Homicide Bureau Interview Transcripts

VOLUME TWO

EXHIBITS

A **Homicide Investigation Case Book URN # 014-09912-0334-055**

B **Thirteen (13) DVD discs containing Homicide Bureau Interviews, Crime Scene Photographs, Radio Traffic, and News Media Footage**

C **District Attorney Letter of Opinion**

MISCELLANEOUS DOCUMENTS

Administrative Rights Force/Shooting Form signed by Deputy Joshua Short

Administrative Rights Force/Shooting Form signed by Deputy Marco Magana

Administrative Rights Force/Shooting Form signed by Deputy Kevin Hilgendorf

Administrative Rights Force/Shooting Form signed by Deputy Robert Lim

Training Records - Deputy Joshua Short

Training Records - Deputy Marco Magana

Training Records – Deputy Kevin Hilgendorf

Homicide transcripts – [redacted]

Homicide transcripts – [redacted]



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

June 30, 2016

Captain Steven Katz
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Travis Herr
J.S.I.D. File No. 14-0672
L.A.S.D. File No. 14-09912-0334-055

Dear Captain Katz:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 29, 2014, non-fatal shooting of Travis Herr by members of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

JAMES GARRISON
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Marco Magana, #[redacted]
Deputy Joshua Short, #[redacted]
Deputy Kevin Hilgendorf, #[redacted]

Hall of Justice
211 West Temple Street, Suite 1200
Los Angeles, CA 90012
(213) 974-3888
Fax: (213) 626-5125
WEBSITE: http://da.co.la.ca.us

MEMORANDUM

TO: CAPTAIN STEVEN KATZ
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Travis Herr
J.S.I.D. File No. 14-0672
L.A.S.D. File No. 014-09912-0334-055

DATE: June 30, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 29, 2014, non-fatal shooting of Travis Herr by Los Angeles County Sheriff's Department (LASD) Deputies Marco Magana, Joshua Short and Kevin Hilgendorf. It is our conclusion that Deputies Magana, Short and Hilgendorf acted in lawful self-defense and in lawful defense of another.

The District Attorney's Command Center was notified of the shooting on October 29, 2014, at approximately 3:18 p.m. The District Attorney Response Team (DART) responded and was given a briefing and a walk-through of the scene.

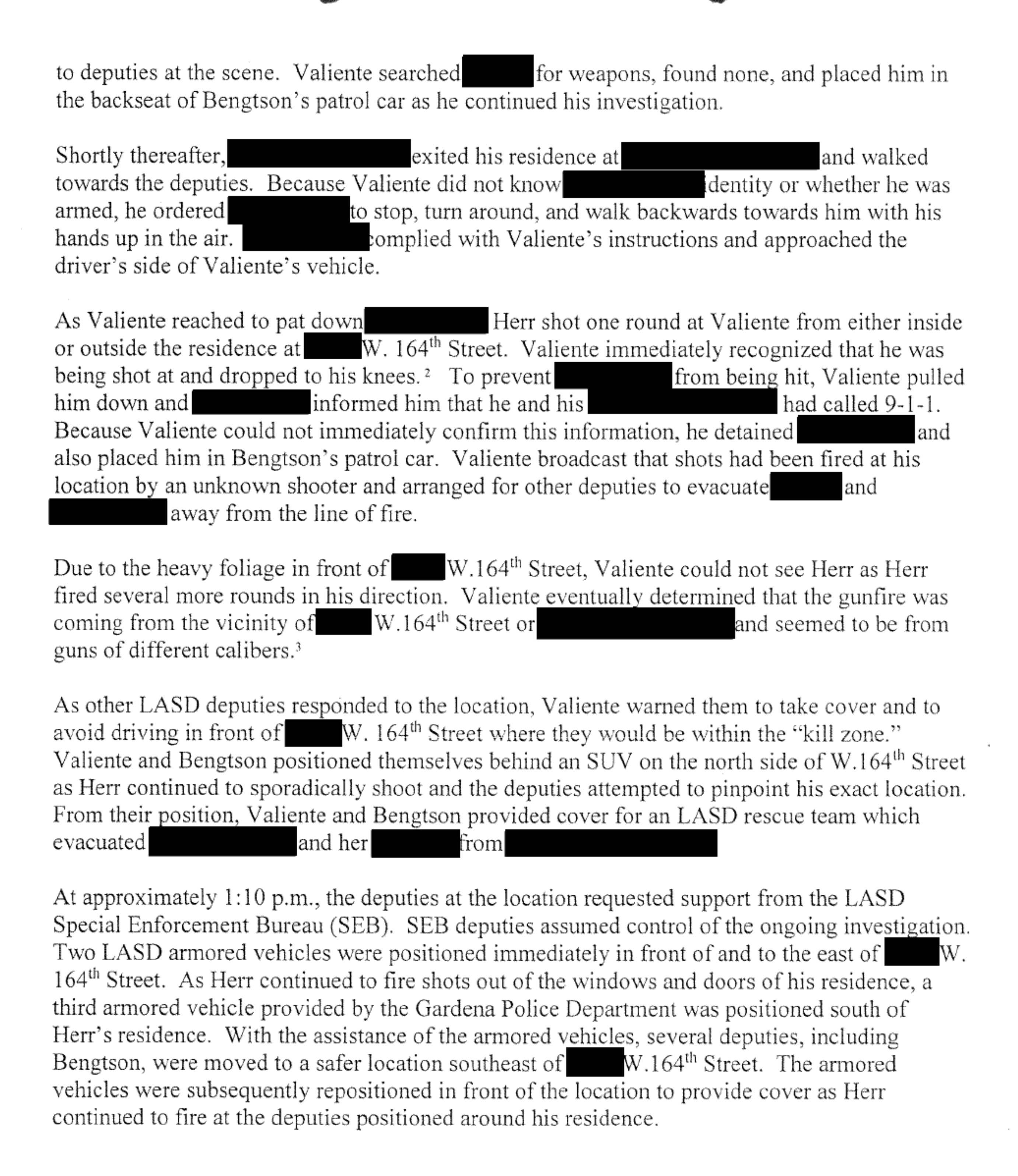
The following analysis is based on various reports submitted by Detectives Joseph Espino and Robert Kinney from the Los Angeles County Sheriff's Department's (LASD) Homicide Bureau.

PROLOGUE

On October 29, 2014, the Los Angeles County Sheriff's Department received a 9-1-1 call regarding a male, later identified as Travis Herr, shooting a shotgun in his backyard.[1]

At approximately 12:40 p.m., LASD Deputies Cesar Valiente and Matthew Bengtson responded to [redacted] W. 164th Street in the City of Lawndale regarding the 9-1-1 call. Valiente and Bengtson parked near [redacted] where Valiente briefly spoke to [redacted] a resident of that location, in order to determine whether he had any information pertaining to the 9-1-1 call. Valiente detained [redacted] based on the fact that he matched a description of the shooter broadcast

[1] The 9-1-1 call was made by [redacted] who is [redacted] to [redacted] and was Herr's [redacted] on the date of the incident. [redacted] was home with her [redacted] and [redacted] when her [redacted] saw Herr standing outside a bedroom window armed with a rifle or shotgun and then heard Herr firing his weapon immediately outside their home. [redacted] and her [redacted] were evacuated from her home by LASD deputies.



to deputies at the scene. Valiente searched [redacted] for weapons, found none, and placed him in the backseat of Bengtson's patrol car as he continued his investigation.

Shortly thereafter, [redacted] exited his residence at [redacted] and walked towards the deputies. Because Valiente did not know [redacted]dentity or whether he was armed, he ordered [redacted] to stop, turn around, and walk backwards towards him with his hands up in the air. [redacted]omplied with Valiente's instructions and approached the driver's side of Valiente's vehicle.

As Valiente reached to pat down [redacted] Herr shot one round at Valiente from either inside or outside the residence at [redacted] W. 164th Street. Valiente immediately recognized that he was being shot at and dropped to his knees.[2] To prevent [redacted] from being hit, Valiente pulled him down and [redacted] informed him that he and his [redacted] had called 9-1-1. Because Valiente could not immediately confirm this information, he detained [redacted] and also placed him in Bengtson's patrol car. Valiente broadcast that shots had been fired at his location by an unknown shooter and arranged for other deputies to evacuate [redacted] and [redacted] away from the line of fire.

Due to the heavy foliage in front of [redacted] W.164th Street, Valiente could not see Herr as Herr fired several more rounds in his direction. Valiente eventually determined that the gunfire was coming from the vicinity of [redacted] W.164th Street or [redacted] and seemed to be from guns of different calibers.[3]

As other LASD deputies responded to the location, Valiente warned them to take cover and to avoid driving in front of [redacted] W. 164th Street where they would be within the "kill zone." Valiente and Bengtson positioned themselves behind an SUV on the north side of W.164th Street as Herr continued to sporadically shoot and the deputies attempted to pinpoint his exact location. From their position, Valiente and Bengtson provided cover for an LASD rescue team which evacuated [redacted] and her [redacted] from [redacted]

At approximately 1:10 p.m., the deputies at the location requested support from the LASD Special Enforcement Bureau (SEB). SEB deputies assumed control of the ongoing investigation. Two LASD armored vehicles were positioned immediately in front of and to the east of [redacted] W. 164th Street. As Herr continued to fire shots out of the windows and doors of his residence, a third armored vehicle provided by the Gardena Police Department was positioned south of Herr's residence. With the assistance of the armored vehicles, several deputies, including Bengtson, were moved to a safer location southeast of [redacted] W.164th Street. The armored vehicles were subsequently repositioned in front of the location to provide cover as Herr continued to fire at the deputies positioned around his residence.

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[2] Several deputies at the location reported hearing bullets fly close by them as Herr attempted to shoot them. For example, Detectives Marcos Escalante and Josue Torres and SEB Deputy Stephan Longan each described hearing bullets pass close to their location.

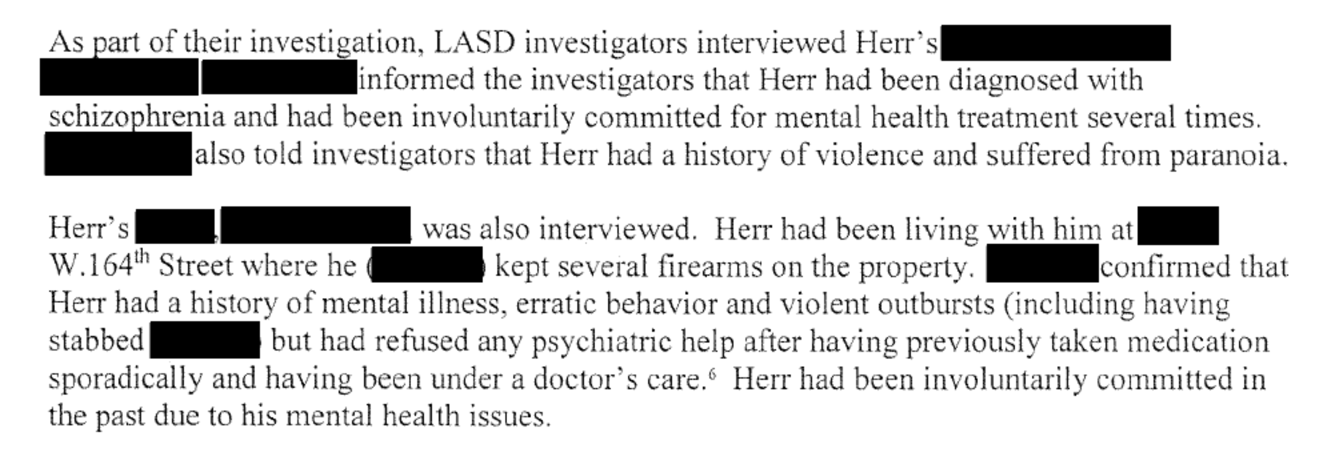
[3] Based on his experience as a [redacted] and as a police officer, Valiente concluded that Herr was firing weapons of different calibers and shifting his location from place to place either within or outside the residence. LASD investigators later recovered an SKS assault rifle, a shotgun and several other firearms of different calibers from inside and outside the residence located at [redacted] W.164th Street.

Deputies Marco Magana, Joshua Short, and Robert Lim, who had also responded to the 9-1-1 call for assistance, positioned themselves in the backyard of [redacted] where they could partially see into the backyard at [redacted] W.164th Street through the chain link and wood slat fence separating the two properties. Magana and Short each deployed their AR-15 rifles and covered the backyard. As he held his position, Magana could hear muffled gunshots coming from inside the residence at [redacted] W.164th Street.[4] Herr fired randomly through the windows of his residence, into the walls and through the front and side doors.

After several minutes, Magana observed Herr exit his residence and heard a very loud report as Herr fired his rifle. Subsequently, Herr pointed his rifle in Magana's direction and fired two shots. Magana felt and heard one of the bullets "whizz" by the left side of his head. In fear for his life and the lives of Deputies Lim and Short, who were close by, Magana fired at Herr. Herr continued walking towards the deputies' position and fired again. Magana and Short returned fire. Herr, who did not appear to be hit, walked northbound out of sight to the front yard of [redacted] W. 164th Street. Several SEB deputies, including Kevin Hilgendorf, were positioned on W.164th Street with a view of Herr's front yard and had taken cover in or behind the armored vehicles parked in front of Herr's residence.

In the front yard, Herr fired his rifle in the direction of Hilgendorf, who was positioned behind the hood of one of the armored vehicles, and in the direction of the deputies next to him also using the armored vehicle for cover.[5] Hilgendorf fired his rifle in fear that he and the deputies around him would be shot and killed. Herr was struck by gunfire and collapsed.

SEB deputies approached Herr, recovered a rifle lying next to him, and arrested him. Herr was transported to Harbor General UCLA Medical Center where he was treated for multiple gunshot wounds. LASD personnel recovered several different rifles and handguns from Herr's residence and found multiple spent cartridges in a variety of calibers.



As part of their investigation, LASD investigators interviewed Herr's [redacted] informed the investigators that Herr had been diagnosed with schizophrenia and had been involuntarily committed for mental health treatment several times. [redacted] also told investigators that Herr had a history of violence and suffered from paranoia.

Herr's [redacted] was also interviewed. Herr had been living with him at [redacted] W.164th Street where he [redacted] kept several firearms on the property. [redacted] confirmed that Herr had a history of mental illness, erratic behavior and violent outbursts (including having stabbed [redacted] but had refused any psychiatric help after having previously taken medication sporadically and having been under a doctor's care.[6] Herr had been involuntarily committed in the past due to his mental health issues.

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[4] Magana estimated that Herr fired 15 to 20 rounds while he was inside the home.

[5] Hilgendorf is approximately 6 feet, 4 inches tall and was able to stand over the hood of the armored vehicle when he returned fire and was able to see over the front fence of Herr's residence. SEB Deputies Grant Roth and Stephen Longan, who were part of the SEB team in or clustered around the armored vehicle with Hilgendorf, observed Herr fire his rifle in their direction through the fence in the front of his property.

[6] As part of their investigation, LASD investigators compiled several reports from different jurisdictions documenting Herr's juvenile and adult history of violence, including reports pertaining to the incident wherein Herr

In case YA091505, Herr was charged with seven counts of attempted murder in violation of Penal Code section 664/187(a), seven counts of assault with an assault weapon/machine gun on a peace officer in violation of Penal Code section 245(d)(3), and two counts of shooting at an inhabited dwelling in violation of Penal Code section 246. Several firearm enhancements were also appended to each of these charges. Herr was found incompetent to stand trial within the meaning of Penal Code section 1368 et seq.. Proceedings in case YA091505 were suspended and Herr was involuntarily committed to a mental health institution for treatment.

CONCLUSION

The use of deadly force in self-defense or in the defense of another is justifiable if the person claiming the right actually and reasonably believed the following: (1) that he or someone else was in imminent danger of being killed or suffering great bodily injury; (2) that the immediate use of force was necessary to defend against that danger; and (3) that he used no more force than was reasonably necessary to defend against that danger. See, *CALCRIM No. 505.*

The test for whether an officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102. Reasonableness of force used by an officer depends on the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *Graham v. Connor* (1989) 490 U.S. 386, 396. "The reasonableness of the particular force used must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* "The calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396-97.

In California, the evaluation of the reasonableness of a police officer's use of deadly force employs a reasonable person acting as a police officer standard. People v. Mehserle, (2012) 206 Cal. App. 4th 1125, 1146 (holding that California law "follows the objective 'reasonable person' standard—the trier of fact is required to evaluate the conduct of a reasonable person in the defendant's position [citations omitted] . . . the jury should consider all relevant circumstances surrounding the defendant's conduct. This enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation—but this is not the same as following a special 'reasonable police officer' standard.")

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stabbed [redacted] [redacted] suffered a serious stab wound which caused internal bleeding and required surgery. He also received treatment for broken ribs, a broken finger, severe bruising, swelling and numerous lacerations.

The evidence presented in this case shows that Deputies Magana, Short and Hilgendorf reasonably believed that Travis Herr posed a significant threat of death or serious physical injury to themselves, their fellow deputies and members of the public.

Without warning, Herr recklessly and repeatedly fired a shotgun and other firearms both inside and outside his residence placing his neighbors, such as [redacted] her [redacted] her [redacted] and the surrounding neighbors in grave danger.

Herr did not stop his deadly conduct when deputies arrived at his residence in response to the 9-1-1 call made by [redacted] Instead, Herr fired at Deputy Valiente, the first deputy to respond, narrowly missing him. Other deputies who responded to Herr's residence and took positions north of his residence, including Detective Escalante, Detective Torres, and Deputy Bengtson, also described being narrowly missed by shots fired at them by Herr. Several deputies were repositioned away from the front of Herr's residence after Herr repeatedly fired shots in their direction.

Herr fired at deputies positioned behind his home as well. When Herr exited his residence and spotted Deputies Magana, Lim and Short in his neighbor's yard, he did not surrender and instead fired several shots in their direction. Because Magana and Short feared for their own lives and the life of Deputy Lim who was also present, both returned fire at Herr.

Though fired upon by Magana and Short, Herr did not surrender but instead walked to his front yard where he fired at Deputy Hilgendorf and the other deputies taking cover behind an armored vehicle. Herr finally stopped his shooting spree after being shot several times by Deputy Hilgendorf who feared for his life and the deputies around him.

Given the totality of the evidence presented, we find that Deputies Hilgendorf, Magana and Short acted in lawful self-defense and in lawful defense of another when each used deadly force against Travis Herr. We are therefore closing our file and will take no further action in this matter.

TABLE OF CONTENTS

SH 2369362

ADDENDUM

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

CASE ADDENDUM

INCIDENT:	**On-duty hit shooting, suspect injured**
IAB FILE NUMBER(S):	**SH 2369362**
URN#:	**014-09912-0334-055**
DATE/TIME:	**October 29, 2014, 1413 hours**
LOCATION:	[redacted] **West 164th Street, Lawndale**

The initial Internal Affairs Bureau investigation case book, regarding this investigation, was submitted and approved on June 2, 2017 . The purpose of this addendum is to include crime scene diagrams **(EXHIBIT D)** and Suspect Herr's medical records **(EXHIBIT E).**